

ZB# 73-12

Herr Scheurmann

(no SBL given)

Her-Schmerhorn. #73-12

Public Hearing

May 7, 1973

~~8:15 p.m.~~

8 p.m. -

Fee paid to Secretary

CCPD notified

4/26/73.

Notice to Town - Withdrawn

file

Filed

6/28/73

1:50 P.M.

DZ

**PUBLIC NOTICE OF
HEARING BEFORE
THE ZONING BOARD OF AP-
PEALS**

PLEASE TAKE NOTICE that the Zoning Board of Appeals of the Town of New Windsor, New York will hold a public hearing pursuant to Section 42-33, A of the Zoning Ordinance on the following proposition:

Appeal No. 73-12

Request that Herr Schermethorn Smith Agency, for a Variance of the regulations of the Zoning Ordinance to permit the sale of general insurance, being a Variance of Article 11, Section 48.7, for property situated as follows: No. 281 Quassaick Avenue, New Windsor, New York 14520.

Said Hearing will take place on the 7th day of May, 1973 at the New Windsor Town Hall, 555 Union Avenue, New Windsor, NY, beginning at 8 o'clock P.M.

FRED WYANT
Chairman

By: PATRICIA CLARK
Secretary

DUE TO THE HIGH RAIN, COUNCIL

State of New York
County of Orange, ss:

Olga Trachewsky , being duly sworn deposes and
says that ^{she} ~~he~~ is Principal Clerk of Newburgh-
Beacon News Co., Inc., Publisher of The Evening News.
a daily newspaper published and of general circulation in
the Counties of Orange and Dutchess, and that the notice
of which the annexed is a true copy was published
One Time
.....
in said newspaper, commencing on the.....27th.....day of
AprilA.D., 19 73 , and ending on
the 27th day of AprilA.D., 19 73

Subscribed and sworn to before me this
.....30th..... day of.....April..... 1973.....

..... day of A.D., 19 75

Ogden, Rachunsky

Recht I waakt

Notary Public of the State of New York, County of Orange.
MY COMMISSION EXPIRES MARCH 30, 1974

Adopted 12/20/65

APPLICATION FOR VARIANCE

Application No. 73-12
Date: Apr. 26, 1973

TO THE ZONING BOARD OF APPEALS OF THE TOWN OF NEW WINDSOR, NEW YORK

I (We) Herr, Abernethy Smith of Carpenter Ave. Newburgh, N.Y.
Agency (Street & Number)

N.Y. HEREBY MAKE
(State)

APPLICATION FOR A VARIANCE:

A. Location of the Property 281 QUASSACK AVE New Windsor.
(Street & Number) (Zone)

B. Provision of the Zoning Ordinance Applicable: (Indicate the article, section, sub-section and paragraph of the Zoning Ordinance applicable, by number. Do not quote the ordinance.) _____

C. NOTE: NECESSARY FINDINGS: Before any Variance is granted, the Zoning Board of Appeals must find all of the following conditions to be present:

1. Conditions and circumstances are unique to the applicant's land, structure or building and do not apply to the neighboring lands, structures or buildings in the same zone because: Immediate Character of neighborhood has changed so that only commercial use of property can be basis for sale to any prospective owner.
2. Strict application of the provisions of this ordinance would deprive the applicant of a reasonable use of the land, structure or building in a manner equivalent to the use permitted to be made by other owners of their neighboring lands, structures or buildings in the same zone because: Character of neighborhood is commercial-retail-business & offices
3. The unique conditions and circumstances are not the result of actions taken of the applicant subsequent to the adoption of the Ordinance because: Character of neighborhood not attributable to the applicant or present owner.

4. Relief, if approved, will not cause substantial detriment to the public good or impair the purposes and intent of this Ordinance because: Provision must be made for certain businesses such as insurance agencies to be on public thoroughfares other than shopping centers.
5. Relief, if approved, will not constitute a grant of special privilege inconsistent with the limitations upon other properties in the zone because: Character of neighborhood is commercial.

D. Describe in detail how the property is to be used and submit plans or sketches in duplicate.

Insurance Agency - sale of General insurance.

E. Application to be accompanied by two checks, one payable to the Town of New Windsor in the amount decided by the Board and the second check payable to the Secretary for taking the public hearing minutes. Applications to be returned to: Secretary of ZBA.

F. NOTICE OF HEARING: Applicant agrees to send notice of any public hearing via registered or certified mail to all abutting land owners as required by Sec. 9.4.1. of the Ordinance.

G. If the property in question is located within a radius of 500 ft. of an adjoining municipality, the Board should be notified. Also, have your attorney check Sec. 239 I&M of the Gen. Municipal Law to see if it applies. If so, notify the Orange County Planning Board by sending them an application.

Dated: _____

Donald N. Hess

Signature of Applicant

STATE OF NEW YORK) SS.:
COUNTY OF ORANGE)

Sworn to on this 23rd day of Apr., 1973.

Patricia Delio

PATRICIA DELIO

Notary Public, State of New York
Appointed (in Orange County)
My Commission expires Mar. 30, 1974

for Hess, Schumacher Associates

77 Maple Avenue

Address

761-7070

Telephone Number

(DO NOT WRITE IN THIS SPACE)

Application No. _____
Date of Hearing _____
Date of Decision _____

Date Received _____
Notice Published _____

DECISION:

LAW OFFICES OF
BROWNING AND STRADAR

WILLIAM L. BROWNING
GEORGE F. STRADAR, JR.
DANIEL S. LUCIA

388 BROADWAY
POST OFFICE BOX 2395
NEWBURGH, NEW YORK 12550
(914) 561-8000

May 31, 1973

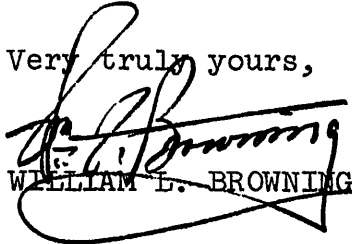
Mr. Fred C. Wygant, Jr.
Chairman, Zoning Board of Appeals
New Windsor, New York

Re: In the matter of the application of
Herr-Schermerhorn-Smith Agency for
Variance with respect to premises
at 281 Quassaick Avenue in the Town
of New Windsor

Dear Fred:

I hand you herewith original and four copies
of memorandum in connection with the above application
for variance.

Very truly yours,


WILLIAM L. BROWNING

WLB:ef
Encs.
G-539

cc: Misses Gillen

BY HAND

TOWN OF NEW WINDSOR:COUNTY OF ORANGE
ZONING BOARD OF APPEALS.

In the matter of the application of
Herr-Schermerhorn-Smith Agency for
Variance with respect to premises at
281 Quassaick Avenue in the Town of
New Windsor

Examination of the minutes of the meeting, May 7, 1973 of the Zoning Board of Appeals upon the hearing of the application reveals one Emilio Panella and one Joseph Smith spoke in support of the application. Mr. Smith appears to be one of the members of the agency making the application for a variance. Mr. Panella appears to be the hired real estate broker to give testimony which could possibly provide the necessary hardship with respect to a variance of the zoning ordinance; but whose hardship? Certainly it could only be the hardship of the owner of the property, Virginia Cimorelli. Mr. Smith's testimony appeared to be solely with respect to the nature of the use of the premises, if the variance is granted, and to the effect that the exterior of the structure upon the premises would not be changed; but, also showing that increased black-topping both in front and back of the house on the premises would be installed for parking purposes. A total, he stated, of eight cars.

Mr. Panella endeavored to show hardship to Mrs. Cimorelli from the facts that the premises had been listed for sale for some time, with him alone for the last eight months, and that he had 12 persons evincing interest in the purchase of the property but upon seeing it had refused to buy. Surprisingly, none of these purchasers were seeking the property for residential

purpose, but only for commercial use. Upon this fact Mr. Panella asserted that the property could not be sold as residential, not at the price which was asked and which was comparable with other parcels in the area.

Mr. Michael Crudele spoke at length in opposition to the application pointing out to the Zoning Board of Appeals that the area was zoned residential and was substantially residential except for a small area occupied by the pharmacy, a doctor's office and the barber shop. It is also to be found in his testimony that all of these commercial uses are on portions of what was formerly the total Cimorelli property starting with the establishment of a grocery store by Mr. Cimorelli to which the neighbors did not object because they were neighbors. When that did not go well, he changed the use to a pharmacy. Somehow a doctor slipped in, again apparently on Cimorelli land.

Between this commercialized area, in violation of the zoning ordinance, and number 281 Quassaick Avenue there is another residence and from 281 southerly to Blooming Grove Turnpike there is nothing but residential use on the east side of Quassaick Avenue.

Question -- Who would suffer the hardship if the application for a variance was granted?

Question -- How can it be determined that the Cimorelli property would not sell for fair market price when no evidence of persons seeking it for residential use was submitted?

Question -- May hardship be created by the owner of the land to his advantage?

POINT NO. 1 -- AN OWNER OF REAL PROPERTY CANNOT
DECLARE HARDSHIP AS THE BASIS FOR A VARIANCE FROM
ZONING ORDINANCE WHEN THE CONDITION CLAIMED TO
CAUSE THE HARDSHIP WAS CREATED BY THAT OWNER.

The tract of land upon which the commercial establishments have arisen was formerly property of Mrs. Cimorelli and her husband and was by them sold or used for purposes other than those authorized by the zoning ordinance and the Misses Gillen purchased their parcel for a home in a residential area which was zoned residential and they have a right to the protection of the law which was held out to them as existing with respect to that particular area at the time they bought. There does not appear to be a substantial change of character in the area between Jay Street and Blooming Grove Turnpike this portion formerly Cimorelli land is the only portion that has any commercial structures on it at all and this portion was formerly a part of the present property known as 281 Quassaick Avenue. The law of zoning does not permit the Machiavellian trick of creating the condition and then claiming it is causing hardship to the creator.

POINT NO. 2 -- THE OWNERS OF THE RESIDENTIAL
PROPERTY IN THE AREA HAVE THE RIGHT TO BE
PROTECTED BY THE ORDINANCE AS NOW DRAWN.

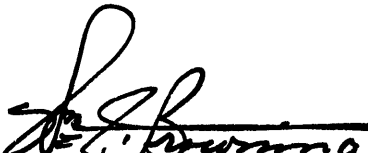
The area is an attractive residential area and the Misses Gillen purchased this home 21 years ago with the hope and intention of remaining there in comfort and pleasant surroundings for the residue of their lives. To bring next door to them at this time additional blacktop parking spaces, additional traffic, passing not just along Quassaick Avenue, but turning off Quassaick Avenue up the grade of a driveway alongside their own private quiet home would produce a hardship that should not be tolerated or allowed.

It is interesting to note that the applicants in this case are the prospective purchasers of the property, who come from outside, who decide they would like to locate their business in this particular spot, knowing full well that the property is residential, knowing that the ordinance has zoned the property residential and knowing that nobody, nobody wants them there. If Mr. Panella would continue to look for persons seeking a residence in this portion of New Windsor, than which there is none lovelier, he will soon be able to find such a purchaser for a reasonable price for the property, will undoubtedly suffer one or two thousand dollars less commission; but, other than that it would appear that no harm or hardship can result to Mr. Panella, Messrs. Herr, Schermerhorn or Smith, or Mrs. Virginia Cimorelli by denial of the application.

POINT NO. 3 -- THE APPLICATION SHOULD BE DENIED.

Respectfully submitted,

BROWNING AND STRADAR
Attorneys for Misses Gillen
Office and Post Office Address
388 Broadway
Newburgh, New York 12550


William L. Browning,
of Counsel

ZONING BOARD OF APPEALS
Town of New Windsor, New York 12550

555 Union Avenue
New Windsor, N. Y.
June 6, 1973

Herr-Schermerhorn-Smith Agency'
P. O. Box 13
Newburgh, N. Y. 12550

RE: APPLICATION FOR VARIANCE

Gentlemen:

Enclosed please find copy of a letter, dated May 31, 1973, from the Orange County Dept. of Planning regarding your application for a variance. As you can see from this letter, the County has rejected your application. As a result of this denial, you would need 5 affirmative votes from the Zoning Board of Appeals in order to override the County's denial.

Kindly advise the ZBA of your actions to be taken as a result of this denial.

Yours truly,

FRED WYGANT, Chairman
New Windsor Zoning Board of Appeals

/pd

(Copy)

289 Quassaick Ave.
New Windsor, N.Y. 12550
May 10, 1973

Mr. Emilio Panella,
182 Grand St.
Newburgh, N.Y.

Dear Mr. Panella,

According to a News Item in the 'Stewart Citizen', May 9, 1973, there was a statement made by you at the New Windsor Town business meeting Monday night regarding the Cimorelli property at 281 Quassaick Ave. that "several offices and stores are on either side of the house".

This is to inform you that the Residence at 289 Quassaick Ave. next to the Cimorelli house is a private home, is not, and never was a store or office of any kind.

Yours truly,

Kathryn E. Gillen (Owner)

289 Quassaick Ave.
New Windsor, N.Y. 12550
May 11, 1973

Mr. Fred Wygant,
Chairman of Zoning Board of Appeals,
Moodna, N.Y.

Dear Mr. Wygant,

Enclosed is a copy of a letter I sent by Registered Mail today to Mr. Emilio Panella.

We have lived in this quiet, residential neighborhood for twenty years, and our homes and neighborhood mean very much to us. We will appreciate any effort on your part to help us maintain this type of neighborhood, so that we will not be forced to leave New Windsor by a business establishment next door.

We trust you will do all in your power to help us keep this a residential area.

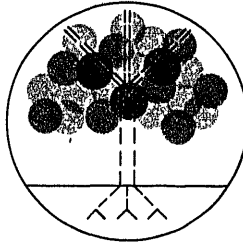
Thank you,

Respectfully yours,

Kathryn E. Gillen

Department of Planning

Peter Garrison, AIP, Commissioner
Edwin J. Garling, AIP, Deputy Commissioner



The County Building
Goshen, New York 10924
(914) 294-5151

County of Orange

Louis V. Mills, County Executive

May 16, 1973

Mr. Fred Wygant, Chairman
Zoning Board of Appeals
Town of New Windsor
c/o Mrs. Patricia Delio
Secretary
7 Franklin Avenue
New Windsor, New York 12550

Dear Mrs. Delio:

We received your letter dated April 27th for the review of a variance on the property owned by Herr-Schermerhorn-Smith. Sorry for the delay, but upon checking tax map records for location of the property I was unable to locate said parcel.

I would like more detailed information as to the location of parcel, (Tax Map section, block and lot), or nearest sites, or correct deed owner.

We will review this application upon receipt of the above information.

Thank you for your cooperation in this matter.

Very truly yours,

Vincent C. Poloniak
Project Review Coordinator

VCP/bd

ZONING BOARD OF APPEALS
Town of New Windsor, New York 12550

May 1, 1973

TO: ZONING BOARD OF APPEALS

Dear Members:

There will be a regular meeting of the ZBA on Monday evening, May 7th at 7:30 p.m. The following is the agenda:

7:30 p.m. - ROLL CALL ✓

Motion to approve the 4/16/73 minutes. ✓

8 p.m. - Public Hearing on Application of Herr-Schermerhorn-Smith - Insurance office on Rt. 94. ✓

8:15 p.m. - Public Hearing of Col-U-Dex Application for Variance - building located on Mac Arthur Avenue.

Decisions: Herbert Downow (outdoor furniture) ✓

Connellv Industries (tennis courts) ✓

Discussion period.

adjournment.

Sincerely,

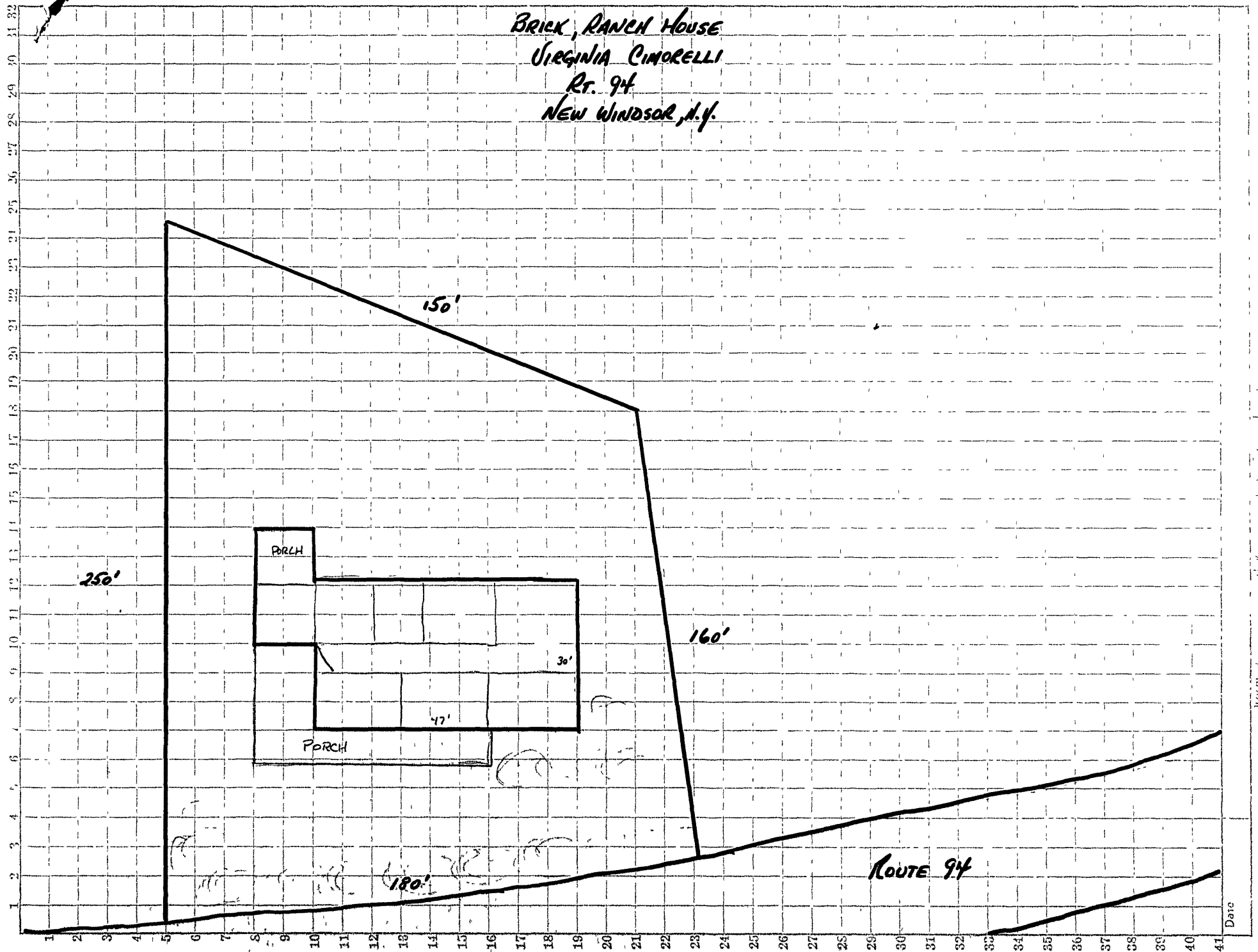
Pat

Wilson - Knox Dr.

Charles Scher -

RE
Are you the broker -
on this proposed sale of
this property from U. Connolly
to Schermerhorn - Herr - Smith

BRICK, RANCH HOUSE
VIRGINIA CIMORELLI
Rt. 94
NEW WINDSOR, N.Y.

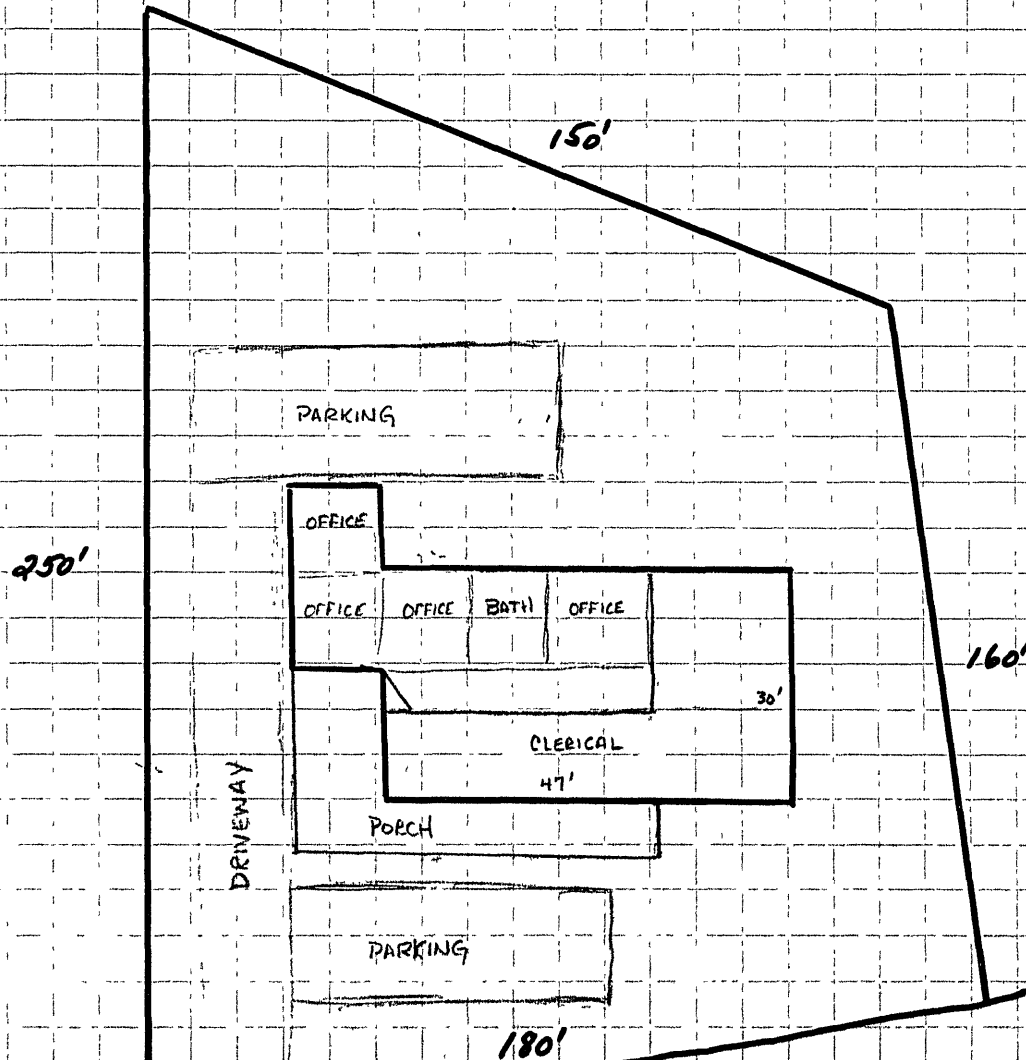


Date

PROPOSED GENERAL INSURANCE AGENCY OFFICE

CHANGES:

- ① REMODEL INSIDE OF STRUCTURE (OFFICES)
- ② PROVIDE PARKING FOR EIGHT VEHICLES IN FRONT
- ③ PROVIDE PARKING FOR EIGHT VEHICLES IN REAR



Route 94

Date

May 7, 1973

Zoning Board of Appeals
Town of New Windsor
New York

Re: Cimorelli Property
281 Quassaick Ave., New Windsor, N.Y.

Gentlemen:

This letter is to inform you that I join in the application of Donald M. Herr, Joseph V. Smith and Richard E. Schermerhorn, in asking for a variance to permit my residence to be used for an insurance office, which I understand, will be considered at a meeting to be held tonight, May 7, 1973.

Very truly yours,

A handwritten signature in cursive script, appearing to read "Virginia Cimorelli", written in dark ink.

VIRGINIA CIMORELLI



OFFICE OF THE ASSESSOR

TOWN OF NEW WINDSOR

Chairman
Ellsworth E. Weyant
555 Union Avenue
New Windsor, New York 12550
(914) 565-8808

April 24, 1973

RE: Cimorelli Property

To Whom It May Concern:

According to my records, the attached list of property owners are within the five hundred (500) feet of the above mentioned property.

The charge for this service is \$25.00. Please remit same to the Town Clerk, Town of New Windsor.

Very truly yours,

A handwritten signature in cursive script that reads "Ellsworth E. Weyant".

ELLSWORTH E. WEYANT
Sole Assessor
Town of New Windsor

EEW/pk
att.

Registered?



OFFICE OF THE ASSESSOR

TOWN OF NEW WINDSOR

Chairman
Ellsworth E. Weyant
555 Union Avenue
New Windsor, New York 12550
(914) 565-8808

Craig, Joseph Jr. & Ruth T.
18 Cross Street
New Windsor, New York 12550

Pearl, Emanuel & Rose
22 Cross Street
New Windsor, New York 12550

Battista, Joseph
24 Cross Street
New Windsor, New York 12550

Martini, Anthony J. & Virginia
26 Cross Street
New Windsor, New York 12550

Dubiell, Ernest J. & Theresa
297 Quassaick Avenue
New Windsor, New York 12550

Huston, James G. & Gilda
7 Schoonmaker Drive
New Windsor, New York 12550

Sausville, Edward A. & Pauline R.
3 Schoonmaker Drive
New Windsor, New York 12550

Fisher, Patricia
15 Cross Street
New Windsor, New York 12550

Peters, Manuel & Laura J.
13 Cross Street
New Windsor, New York 12550

Panella, Emilio
182 Grand Street
Newburgh, New York 12550

Fiedelholtz, Jerald & Rachel
10 Stonecrest Drive
New Windsor, New York 12550

Krzaniwsky, George P.

272 Quassaick Avenue
New Windsor, New York 12550



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OFFICE OF THE ASSESSOR

TOWN OF NEW WINDSOR

Chairman
Ellsworth E Weyant
555 Union Avenue
New Windsor, New York 12550
(914) 565-8808

Poliotti, Angelo & Naomi
276 Quassaick Avenue
New Windsor, New York 12550

Pacione, Anthony & Sylvia
278 Quassaick Avenue
New Windsor, New York 12550

Terrasi, Anfonso & Rita Marie
280 Quassaick Avenue
New Windsor, New York 12550

Ferguson, Ann C. & Marry C.
P.O. Box 1161
Newburgh, New York 12550

Ruby, Ralph Jr.
284 Quassaick Avenue
New Windsor, New York 12550

Davis, Thomas R. & Hermie L.
286 Quassaick Avenue
New Windsor, New York 12550

Phillips, Robert W.
P.O. Box 441
Vails Gate, New York 12584

Olsen, Ernest E. & Mildred G.
290 Quassaick Avenue
New Windsor, New York 12550

Lahey, John V. & Helen F.
292 Quassaick Avenue
New Windsor, New York 12550

Warmers, Fredric J. & Fred E. & Tessie W.
P.O. Box 148
Newburgh, New York 12550

Davis, Clifford & Marie
33 Cross Street
New Windsor, New York 12550



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OFFICE OF THE ASSESSOR

TOWN OF NEW WINDSOR

Chairman
Ellsworth E. Weyant
555 Union Avenue
New Windsor, New York 12550
(914) 565-8808

Denton, Harriet C.
31 Cross Street
New Windsor, New York 12550

Alessi, Angelo & Anna M.
29 Cross Street
New Windsor, New York 12550

Coppola, Edgar P. & Rose M.
27 Cross Street
New Windsor, New York 12550

Cimorelli, Louis B. & Virginia
25 Cross Street
New Windsor, New York 12550

Medina, Antonette
23 Cross Street
New Windsor, New York 12550

Farley, Edward W. & Jane R.
21 Cross Street
New Windsor, New York 12550

Veccho, George J. & Julia M/
4 Schoonmaker Drive
New Windsor, New York 12550

Diamonti, Patrick J. & Gloria M.
6 Schoonmaker Drive
New Windsor, New York 12550

Crudele, Michael A. & Helen A.
291 Quassaick Avenue
New Windsor, New York 12550

Gillen, Kathryn E. & Mary A.
289 Quassaick Avenue
New Windsor, New York 12550

Angelone, Joseph A. & Jeannie P.
RD#2 Moores Hill Road
New Windsor, New York 12550

Nilsson, Gosta & Adelaide
279 Quassaick Avenue
New Windsor, New York 12550



OFFICE OF THE ASSESSOR

TOWN OF NEW WINDSOR

Chairman
Ellsworth E. Weyant
555 Union Avenue
New Windsor, New York 12550
(914) 565-8808

Areman, Ronald
Rothenberg, Abraham
277 Quassaick Avenue
New Windsor, New York 12550

D'Angelo, Benedetto & Angela
273 Quassaick Avenue
New Windsor, New York 12550

Moulton, Edward C.
P.O. Box 88
New Windsor, New York 12550

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Respectfully submitted,

A handwritten signature in cursive script that reads "Ellsworth E. Weyant".

ELLSWORTH E. WEYANT
Sole Assessor
Town of New Windsor